
HOUSE BILL 1724

State of Washington

59th Legislature

2005 Regular Session

By Representatives Conway, Hudgins, Wood, Appleton, Ormsby, Simpson, Morrell, Williams, Kenney, Kirby, Kagi, Cody, Schual-Berke, McCoy, Chase, Sells, Clibborn, O'Brien, Hunt, Hasegawa, Moeller and P. Sullivan

Read first time 02/02/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to requiring disclosure of work under state
2 contracts that is performed at locations outside the United States;
3 amending RCW 39.29.008, 41.06.142, and 43.19.1911; adding new sections
4 to chapter 39.29 RCW; creating new sections; providing an effective
5 date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. It is essential that
8 the legislature and state agencies spend tax dollars in a manner that
9 is both responsible and consistent with the economic interests of the
10 state and the nation. The legislature and state agencies should,
11 therefore, consider indirect benefits that may be achieved when
12 entering into contracts for public works, personal services, purchased
13 services, information services, and highway design and construction.
14 Such benefits include, but are not limited to, job creation, capital
15 investment, and economic stimulus.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.29 RCW
17 to read as follows:

18 DISCLOSURE REQUIREMENT. For purposes of RCW 39.29.008, 41.06.142,

1 and 43.19.1911, "offshore outsourcing information" means records of:
2 (1) The locations in which work is performed outside the United States;
3 (2) the number of workers performing such work; (3) the occupations of
4 each of the workers; (4) the number of hours worked by each of the
5 workers; and (5) the amount of wages paid and the types and values of
6 benefits provided to each of the workers.

7 **Sec. 3.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to read
8 as follows:

9 Personal services may be procured only to resolve a particular
10 agency problem or issue or to expedite a specific project that is
11 temporary in nature. An agency may procure personal services only if
12 it documents that: (1) The service is critical to agency
13 responsibilities or operations, or is mandated or authorized by the
14 legislature; (2) sufficient staffing or expertise is not available
15 within the agency to perform the service; and (3) other qualified
16 public resources are not available to perform the service. Personal
17 services contracts, and any subcontracts awarded under personal
18 services contracts, must include provisions requiring disclosure of
19 offshore outsourcing information as specified in section 2 of this act.

20 **Sec. 4.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
21 read as follows:

22 (1) Any department, agency, or institution of higher education may
23 purchase services, including services that have been customarily and
24 historically provided by employees in the classified service under this
25 chapter, by contracting with individuals, nonprofit organizations,
26 businesses, employee business units, or other entities if the following
27 criteria are met:

28 (a) The invitation for bid or request for proposal contains
29 measurable standards for the performance of the contract;

30 (b) Employees in the classified service whose positions or work
31 would be displaced by the contract are provided an opportunity to offer
32 alternatives to purchasing services by contract and, if these
33 alternatives are not accepted, compete for the contract under
34 competitive contracting procedures in subsection (4) of this section;

35 (c) The contract with an entity other than an employee business

1 unit includes a provision requiring the entity to consider employment
2 of state employees who may be displaced by the contract;

3 (d) The contract, and any subcontract awarded under the contract,
4 must include provisions requiring disclosure of offshore outsourcing
5 information as specified in section 2 of this act;

6 (e) The department, agency, or institution of higher education has
7 established a contract monitoring process to measure contract
8 performance, costs, service delivery quality, and other contract
9 standards, and to cancel contracts that do not meet those standards;
10 and

11 ((+e)) (f) The department, agency, or institution of higher
12 education has determined that the contract results in savings or
13 efficiency improvements. The contracting agency must consider the
14 consequences and potential mitigation of improper or failed performance
15 by the contractor.

16 (2) Any provision contrary to or in conflict with this section in
17 any collective bargaining agreement in effect on July 1, 2005, is not
18 effective beyond the expiration date of the agreement.

19 (3) Contracting for services that is expressly mandated by the
20 legislature or was authorized by law prior to July 1, 2005, including
21 contracts and agreements between public entities, shall not be subject
22 to the processes set forth in subsections (1) and (4) through (6) of
23 this section.

24 (4) Competitive contracting shall be implemented as follows:

25 (a) At least ninety days prior to the date the contracting agency
26 requests bids from private entities for a contract for services
27 provided by classified employees, the contracting agency shall notify
28 the classified employees whose positions or work would be displaced by
29 the contract. The employees shall have sixty days from the date of
30 notification to offer alternatives to purchasing services by contract,
31 and the agency shall consider the alternatives before requesting bids.

32 (b) If the employees decide to compete for the contract, they shall
33 notify the contracting agency of their decision. Employees must form
34 one or more employee business units for the purpose of submitting a bid
35 or bids to perform the services.

36 (c) The director of personnel, with the advice and assistance of
37 the department of general administration, shall develop and make

1 available to employee business units training in the bidding process
2 and general bid preparation.

3 (d) The director of general administration, with the advice and
4 assistance of the department of personnel, shall, by rule, establish
5 procedures to ensure that bids are submitted and evaluated in a fair
6 and objective manner and that there exists a competitive market for the
7 service. Such rules shall include, but not be limited to: (i)
8 Prohibitions against participation in the bid evaluation process by
9 employees who prepared the business unit's bid or who perform any of
10 the services to be contracted; (ii) provisions to ensure no bidder
11 receives an advantage over other bidders and that bid requirements are
12 applied equitably to all parties; and (iii) procedures that require the
13 contracting agency to receive complaints regarding the bidding process
14 and to consider them before awarding the contract. Appeal of an
15 agency's actions under this subsection is an adjudicative proceeding
16 and subject to the applicable provisions of chapter 34.05 RCW, the
17 administrative procedure act, with the final decision to be rendered by
18 an administrative law judge assigned under chapter 34.12 RCW.

19 (e) An employee business unit's bid must include the fully
20 allocated costs of the service, including the cost of the employees'
21 salaries and benefits, space, equipment, materials, and other costs
22 necessary to perform the function. An employee business unit's cost
23 shall not include the state's indirect overhead costs unless those
24 costs can be attributed directly to the function in question and would
25 not exist if that function were not performed in state service.

26 (f) A department, agency, or institution of higher education may
27 contract with the department of general administration to conduct the
28 bidding process.

29 (5) As used in this section:

30 (a) "Employee business unit" means a group of employees who perform
31 services to be contracted under this section and who submit a bid for
32 the performance of those services under subsection (4) of this section.

33 (b) "Indirect overhead costs" means the pro rata share of existing
34 agency administrative salaries and benefits, and rent, equipment costs,
35 utilities, and materials associated with those administrative
36 functions.

37 (c) "Competitive contracting" means the process by which classified

1 employees of a department, agency, or institution of higher education
2 compete with businesses, individuals, nonprofit organizations, or other
3 entities for contracts authorized by subsection (1) of this section.

4 (6) The joint legislative audit and review committee shall conduct
5 a performance audit of the implementation of this section, including
6 the adequacy of the appeals process in subsection (4)(d) of this
7 section, and report to the legislature by January 1, 2007, on the
8 results of the audit.

9 **Sec. 5.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read
10 as follows:

11 (1) Preservation of the integrity of the competitive bid system
12 dictates that after competitive bids have been opened, award must be
13 made to that responsible bidder who submitted the lowest responsive bid
14 pursuant to subsections (7) and (9) of this section, unless there is a
15 compelling reason to reject all bids and cancel the solicitation.

16 (2) Every effort shall be made to anticipate changes in a
17 requirement before the date of opening and to provide reasonable notice
18 to all prospective bidders of any resulting modification or
19 cancellation. If, in the opinion of the purchasing agency, division,
20 or department head, it is not possible to provide reasonable notice,
21 the published date for receipt of bids may be postponed and all known
22 bidders notified. This will permit bidders to change their bids and
23 prevent unnecessary exposure of bid prices. In addition, every effort
24 shall be made to include realistic, achievable requirements in a
25 solicitation.

26 (3) After the opening of bids, a solicitation may not be canceled
27 and resolicited solely because of an increase in requirements for the
28 items being acquired. Award may be made on the initial solicitation
29 and an increase in requirements may be treated as a new acquisition.

30 (4) A solicitation may be canceled and all bids rejected before
31 award but after bid opening only when, consistent with subsection (1)
32 of this section, the purchasing agency, division, or department head
33 determines in writing that:

34 (a) Unavailable, inadequate, ambiguous specifications, terms,
35 conditions, or requirements were cited in the solicitation;

36 (b) Specifications, terms, conditions, or requirements have been
37 revised;

1 (c) The supplies or services being contracted for are no longer
2 required;

3 (d) The solicitation did not provide for consideration of all
4 factors of cost to the agency;

5 (e) Bids received indicate that the needs of the agency can be
6 satisfied by a less expensive article differing from that for which the
7 bids were invited;

8 (f) All otherwise acceptable bids received are at unreasonable
9 prices or only one bid is received and the agency cannot determine the
10 reasonableness of the bid price;

11 (g) No responsive bid has been received from a responsible bidder;
12 or

13 (h) The bid process was not fair or equitable.

14 (5) The agency, division, or department head may not delegate his
15 or her authority under this section.

16 (6) After the opening of bids, an agency may not reject all bids
17 and enter into direct negotiations to complete the planned acquisition.
18 However, the agency can enter into negotiations exclusively with the
19 lowest responsible bidder in order to determine if the lowest
20 responsible bid may be improved. Until December 31, 2007, for
21 purchases requiring a formal bid process the agency shall also enter
22 into negotiations with and may consider for award the lowest
23 responsible bidder that is a vendor in good standing, as defined in RCW
24 43.19.525. An agency shall not use this negotiation opportunity to
25 permit a bidder to change a nonresponsive bid into a responsive bid.

26 (7) In determining the lowest responsible bidder, the agency shall
27 consider any preferences provided by law to Washington products and
28 vendors and to RCW 43.19.704, and further, may take into consideration
29 the quality of the articles proposed to be supplied, their conformity
30 with specifications, the purposes for which required, and the times of
31 delivery.

32 (8) Each bid with the name of the bidder shall be entered of record
33 and each record, with the successful bid indicated, shall, after
34 letting of the contract, be open to public inspection.

35 (9) In determining "lowest responsible bidder", in addition to
36 price, the following elements shall be given consideration:

37 (a) The ability, capacity, and skill of the bidder to perform the
38 contract or provide the service required;

1 (b) The character, integrity, reputation, judgment, experience, and
2 efficiency of the bidder;

3 (c) Whether the bidder can perform the contract within the time
4 specified;

5 (d) The quality of performance of previous contracts or services;

6 (e) The previous and existing compliance by the bidder with laws
7 relating to the contract or services;

8 (f) Such other information as may be secured having a bearing on
9 the decision to award the contract: PROVIDED, That in considering bids
10 for purchase, manufacture, or lease, and in determining the "lowest
11 responsible bidder," whenever there is reason to believe that applying
12 the "life cycle costing" technique to bid evaluation would result in
13 lowest total cost to the state, first consideration shall be given by
14 state purchasing activities to the bid with the lowest life cycle cost
15 which complies with specifications. "Life cycle cost" means the total
16 cost of an item to the state over its estimated useful life, including
17 costs of selection, acquisition, operation, maintenance, and where
18 applicable, disposal, as far as these costs can reasonably be
19 determined, minus the salvage value at the end of its estimated useful
20 life. The "estimated useful life" of an item means the estimated time
21 from the date of acquisition to the date of replacement or disposal,
22 determined in any reasonable manner. Nothing in this section shall
23 prohibit any state agency, department, board, commission, committee, or
24 other state-level entity from allowing for preferential purchase of
25 products made from recycled materials or products that may be recycled
26 or reused.

27 (10) Contracts for services, and any subcontracts awarded under
28 contracts for services, must include provisions requiring disclosure of
29 offshore outsourcing information as specified in section 2 of this act.

30 NEW SECTION. Sec. 6. A new section is added to chapter 39.29 RCW
31 to read as follows:

32 (1) The requirement in RCW 39.29.008, 41.06.142, and 43.19.1911
33 that certain contracts include provisions requiring disclosure of
34 offshore outsourcing information as specified in section 2 of this act
35 does not apply to:

36 (a) Contracts for goods; or

1 (b) Contracts for services if the director of the office of
2 financial management determines that the only practicable location
3 where the services may be performed is clearly and justifiably a
4 location outside the United States. This exception to the prohibition
5 may apply, by way of illustration and not as a limitation, to services
6 related to the establishment and operation of foreign offices created
7 for the purpose of promoting overseas trade and commerce, research
8 projects conducted by faculty at state institutions of higher
9 education, and study abroad programs offered by state institutions of
10 higher education.

11 (2) By September 1st of each year, the director of the office of
12 financial management shall provide the house of representatives
13 commerce and labor committee and the senate labor, commerce, research
14 and development committee, or their successor committees, with a list
15 of contracts entered into in the previous fiscal year for which he or
16 she determined that the only practicable location where the services
17 could be performed was clearly and justifiably a location outside the
18 United States.

19 NEW SECTION. **Sec. 7.** SEVERABILITY. If any provision of this act
20 or its application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 8.** FEDERAL SEVERABILITY. If any part of this
24 act is found to be in conflict with federal requirements that are a
25 prescribed condition to the allocation of federal funds to the state,
26 the conflicting part of this act is inoperative solely to the extent of
27 the conflict and with respect to the agencies directly affected, and
28 this finding does not affect the operation of the remainder of this act
29 in its application to the agencies concerned. Rules adopted under this
30 act must meet federal requirements that are a necessary condition to
31 the receipt of federal funds by the state.

32 NEW SECTION. **Sec. 9.** CAPTIONS NOT LAW. Captions used in this act
33 are not any part of the law.

1 NEW SECTION. **Sec. 10.** APPLICABILITY. This act does not apply to
2 contracts entered into before July 1, 2005.

3 NEW SECTION. **Sec. 11.** EFFECTIVE DATE. This act is necessary for
4 the immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and takes effect immediately, except for section 3 of this act which
7 takes effect July 1, 2005.

--- END ---